

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 31.01.2020
CORAM
THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN
H.C.P.No.2333 of 2019

Malar

W/o.Late Sekar @ Bombay Sekar

... Petitioner

Vs

- 1.The Secretary to the Government,
Prohibition and Excise Department,
Fort St.George, Chennai - 600009.
- 2.The Commissioner of Police,
Greater Chennai,
Egmore, Chennai.
- 3.The State represented by
The Inspector of Police [Law & Order],
J-11 Kannagi Nagar Police Station,
Chennai - 600097.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus directing respondents to produce the petitioner's son viz. S.Umapathy S/o.Sekar @ Bombay Sekar, Male, aged about 29 years, now confined at Central Prison, Puzhal, Chennai, before this Court and set him at liberty forthwith by setting aside the order detaining the petitioner's son as a 'Goonda' vide order of detention bearing BCDFGISSSV No.563/2019 dated 06.09.2019 on the file of second respondent.

For Petitioner : Mr.A.Thirumaran

For Respondents : Mr.R.Prathap Kumar

Additional Public Prosecutor

W R D E R
[Order of this Court was made by R.SUBBIAH, J]

Petitioner is the mother of the detenu viz., S.Umapathy S/o.Sekar @ Bombay Sekar, aged 29 years, who has been branded as a 'Goonda' under the Tamil Nadu Act 14 of 1982 and detained under order of second respondent passed in BCDFGISSSV No.563/2019 dated 06.09.2019.

2. The detenu came to adverse notice in the following cases:

Sl. No.	Police Station and Crime No.	Section of Law
1.	B-2 Esplanade Police Station, Cr.No.140/2016	147, 341, 294(b), 323 and 506(i) IPC r/w 149 IPC
2.	J-11 Kannagi Nagar P.S., Cr.No.129/2017	8(c) r/w 20(b)(ii)(B) of NDPS Act
3.	J-11 Kannagi Nagar P.S., Cr.No.1080/2018	294(b), 352, 427 and 506(ii) IPC
4.	J-11 Kannagi Nagar P.S., Cr.No.272/2019	341, 294(b), 384 and 506(ii) IPC

The alleged ground case has been registered against the detenu in Crime No.438 of 2019 on the file of J-11 Kannagi Nagar Police Station for offences u/s.294(b), 323, 324, 307, 336 and 506(ii) IPC. Aggrieved by the order of detention, the present writ petition has been filed.

3. Heard learned counsel for petitioner and learned Additional Public Prosecutor appearing for respondents. Perused the materials on record.

4. Learned counsel for petitioner submits that despite the admitted position that no bail application has been moved by the detenu in the ground case, the detaining authority has informed a real possibility of his coming out on bail by filing a bail application since in a similar case bail was granted by learned Principal Sessions Judge, Salem, in C.M.P.No.1232 of 2018 in respect of Crime No.193 of 2018 on the file of T-3 Korattur Police Station for offences u/s.294(b), 324, 307 and 506(ii) IPC. Learned counsel submits that in the case cited as similar, the offences u/s.323 and 326 IPC were not present whereas in the ground case, such offences have also been alleged. The non-consideration of such aspect reflects non-application of mind.

5. We have heard learned Additional Public Prosecutor on the above submissions.

6. As rightly submitted by learned counsel for petitioner, in the similar case, relied on by the detaining authority in arriving at a subjective satisfaction, offences u/s.323 and 326 IPC were not present. Hence, we find that the order of detention suffers from non-application of mind.

Accordingly, the Habeas Corpus Petition is allowed and the detention order passed by the second respondent against the detenu viz., S.Umapathy S/o.Bombay Sekar, aged 29 years, in BCDFGISSSV No.563/2019 dated 06.09.2019, is set aside. The above named detenu is ordered to be set at liberty forthwith, unless his custody is required in connection with any other case.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

gm

To

- 1.The Secretary to the Government,
Prohibition and Excise Department,
Fort St.George, Chennai - 600009.
- 2.The Commissioner of Police,
Greater Chennai, Egmore, Chennai.
- 3.The Inspector of Police [Law & Order],
J-11 Kannagi Nagar Police Station,
Chennai - 600097.
- 4.The Superintendent of Prison,
Central Prison, Puzhal, Chennai.
- 5.The Public Prosecutor,
High Court, Madras.
- 6.The Joint Secretary to Government,
Public (Law and Order) Department,
Secretariat, Chennai-09.

BP(CO)
CSR: 12.03.2020

H.C.P.No.2333 of 2019

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